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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. MATTHEW VALLEJOS, Defendant and Appellant.	A146470 (Solano County Super. Ct. No. VCR219677)

Appellant Matthew Vallejos was on probation for a felony conviction of possessing stolen property when Proposition 47, "the Safe Neighborhoods and Schools Act," was enacted.[1] While he was still serving probation and before he was sentenced for a probation violation, Vallejos petitioned to have his conviction reduced to a misdemeanor under Proposition 47. The petition was denied after an evidentiary hearing in which the parties disputed the value of the stolen property, and thus whether Vallejos's conviction still qualified as a felony. We affirm.

I.
FACTUAL AND PROCEDURAL BACKGROUND

Vallejos was charged by felony complaint in December 2013 after he and another man were seen fleeing a house that had been burglarized. In September 2014 he pleaded no contest under a plea agreement to one felony count of possession of stolen property.

[1] Proposition 47 added section 1170.18 to the Penal Code. All further statutory references are to that code.

This offense is a wobbler, a crime that can be charged as either a felony or a misdemeanor. At the time of the plea, a felony charge could be brought regardless of the value of the stolen property. (§ 496, former subd. (a).) The trial court suspended imposition of sentence and placed Vallejos on three years' formal probation.

Less than a month after the plea, Vallejos's probation was revoked, but it was subsequently reinstated, and Vallejos was placed in a residential-treatment program. After Vallejos apparently left this program, his probation was again revoked when he faced new charges in a separate case.

Around this same time, the voters enacted Proposition 47, which became effective on November 5, 2014. (Cal. Const., art. II, § 10, subd. (a).) Proposition 47 added section 1170.18, which reduced punishment for specified drug and theft offenses from straight felonies and wobblers to misdemeanors. As relevant to this appeal, the proposition amended section 496, subdivision (a), to provide that receiving stolen property is a misdemeanor when the value of property does not exceed $950 and the defendant has not suffered specified prior convictions.

On December 1, 2014, Vallejos filed a petition to have his conviction reduced to a misdemeanor and to be resentenced. The People opposed the petition. According to the opposition, Vallejos had been found fleeing the burglarized home in this case with "a handful of jewelry, Filipino money, and $813 in cash," and it was his burden to prove that the offense qualified as a misdemeanor by establishing that the value of the stolen property was $950 or less.

After several continuances (some related to separate proceedings against Vallejos), a hearing on the petition was held on August 31, 2015. The court heard conflicting evidence about the value of items that were found on Vallejos. The police officer who searched Vallejos testified that he found $813 in cash but did not know the value of the jewelry and the Filipino money recovered. In his police report, the officer entered a value of zero for the jewelry. The officer could not recall how much jewelry he found on Vallejos (other than that it was "a handful maybe"), whether it was costume or "high-end" jewelry, or whether he found a small or large sum of Filipino money. The burglary

victim, by contrast, testified that more than 10 pieces of jewelry were taken from her home, and only some were recovered. The jewelry "had been handed down from [her] father's parents from generation to generation," and it included pieces with gold, silver, and diamonds. She estimated that the value of the jewelry was "definitely" more than $1,000. On cross-examination, she clarified that the jewelry with diamonds worth thousands of dollars was never returned to her. She also clarified that only two pieces of missing jewelry of value (a pendant and a 15-year-old gold Waltman watch) were returned to her, and the rest was plastic.

The trial court denied Vallejos's petition to reduce his conviction to a misdemeanor. The court also found him to be in violation of his probation in three separate cases for failing to complete a required residential-treatment program. Vallejos was sentenced to the midterm of two years in this case for the conviction for possession of stolen property.

II.
DISCUSSION

Vallejos argues that the trial court erred in denying his petition. He first argues that the trial court was obligated to apply Proposition 47 "retroactively" so as to require the prosecution to prove that his crime was a felony under the new version of the statute, i.e., that the value of the property he possessed exceeded $950. According to him, he was entitled to a retroactive sentence as if Proposition 47 were in effect at the time of his conviction because, even though he was convicted before Proposition 47 was enacted, he "was not *sentenced* until *after* the effective date" of the proposition. Alternatively, Vallejos argues that the trial court erred in requiring him to bear the burden of proof on the value of the stolen property. We are persuaded by neither of these arguments.

As to the first argument, it fails under our recent decision in *People v. Davis* (2016) 246 Cal.App.4th 127, 132 (*Davis*), which held that defendants on probation are "currently serving a sentence" for purposes of a petition for a recall of sentence under section 1170.18, subdivision (a). In *Davis*, we concluded that defendants who are on probation for felonies that became misdemeanors because of Proposition 47 may petition

for a recall of their convictions, but they are not entitled to be retroactively sentenced as if Proposition 47 were in effect at the time of their convictions.[2] (*Ibid.*) *Davis* rejected the same arguments Vallejos makes about the retroactivity of Proposition 47 under *In re Estrada* (1965) 63 Cal.2d 740 and whether a defendant on probation is "serving a sentence" for purposes of Proposition 47. (*Davis*, at pp. 135-143.)

We recognize that the Supreme Court granted review of *Davis* on July 13, 2016 (No. S234324), and briefing was ordered deferred pending the court's decision in *People v. DeHoyos* (S228230, rev. granted Sept. 30, 2015), which presents the issue of whether Proposition 47 applies retroactively to a defendant who was sentenced before the proposition's effective date but whose judgment was not final until after that date. But we decline to depart from our holding in *Davis* absent further direction from the Supreme Court on the issue. (Cal. Rules of Court, rule 8.1105(e)(1)(B) [Supreme Court's grant of review after July 1, 2016, does not affect publication status of appellate court's opinion].)

Vallejos's second argument—that it was the prosecution's burden to prove his ineligibility for resentencing—also fails. We decline to part company from the courts that have considered, and rejected, this same argument. (*People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449; see also *People v. Perkins* (2016) 244 Cal.App.4th 129, 136-137, and cases cited therein.) We likewise reject Vallejos's argument that a jury finding was required on the value of the stolen property. (*Rivas-Colon*, *supra*, at pp. 451-452.)

Furthermore, regardless of which party bore the burden of proof, substantial evidence supports the trial court's finding that the value of the property was more than $950. (*People v. Perkins*, *supra*, 244 Cal.App.4th at pp. 136-137 [trial court's factual findings in ruling on Proposition 47 petition reviewed for substantial evidence].)

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[2] In *Davis*, the defendant wanted to be sentenced retroactively such that the restriction on owning firearms found in section 1170.18, subdivision (k), did not apply. (*Davis*, *supra*, 246 Cal.App.4th at p. 133.) Here, by contrast, Vallejos does not articulate any benefit he would receive from being sentenced retroactively under Proposition 47. Under his original plea agreement, he understood that he could receive a maximum sentence of three years in county jail in this case, plus an additional two years in county jail in a separate case, for a total of five years. Vallejos has not sought to withdraw his plea or argue that the plea agreement no longer applies.

Vallejos does not argue to the contrary. Instead, he contends as a legal matter that the prosecution should have been required to prove the value of the property beyond a reasonable doubt. But even if we assume that this is the correct legal standard, it was met here. There was no dispute that $813 in cash was found on Vallejos. True, the testimony regarding the stolen jewelry found on him did not establish its value with precision. The victim testified that she "kn[e]w" that the gold Waltman watch recovered from Vallejos was "expensive." When asked if she thought it was worth more than $200, the victim further testified, "Maybe. Oh, yes. I think so." When pressed about whether she would sell the watch for less than $200, she testified, "I don't think so because just the gold it's expensive." This was sufficient evidence to establish that the watch found on Vallejos was worth more than $137, and thus that the value of all the property found on him exceeded $950 for purposes of establishing a felony violation of section 496, subdivision (a).

III.
DISPOSITION

The judgment is affirmed.

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Humes, P.J.

We concur:

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Dondero, J.

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Banke, J.